

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "C" NEW DELHI

BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER  
AND  
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER

आ.अ.सं./I.T.A No.2264/Del/2022

निर्धारणवर्ष/Assessment Year: 2014-15

Smt. Kaushliya, B-15, Sector-12, Gautam Budha Nagar, Noida, Uttar Pradesh-201301 PAN No.ANXPk9426G	बनाम Vs.	DCIT Central Circle-1, 2 <sup>nd</sup> Floor, ARTO Complex, Sector-33, Noida, Uttar Pradesh.
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

आ.अ.सं./I.T.A No.2265/Del/2022

निर्धारणवर्ष/Assessment Year: 2016-17

Smt. Kaushliya, B-15, Sector-12, Gautam Budha Nagar, Noida, Uttar Pradesh-201301 PAN No.ANXPk9426G	बनाम Vs.	DCIT Central Circle-1, 2 <sup>nd</sup> Floor, ARTO Complex, Sector-33, Noida, Uttar Pradesh.
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

आ.अ.सं./I.T.A No.2266/Del/2022

निर्धारणवर्ष/Assessment Year: 2017-18

Smt. Kaushliya, B-15, Sector-12, Gautam Budha Nagar, Noida, Uttar Pradesh-201301 PAN No.ANXPk9426G	बनाम Vs.	DCIT Central Circle-1, 2 <sup>nd</sup> Floor, ARTO Complex, Sector-33, Noida, Uttar Pradesh.
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

Assessee by	Shri K.R. Manjani, Adv. & Shri Tarun Aswani, Adv.
Revenue by	Shri Javed Akhtar, CIT DR

सुनवाईकीतारीख/ Date of hearing:	29.08.2024
उद्घोषणाकीतारीख/ Pronouncement on	04.09.2024

**आदेश /ORDER**

**PER C.N. PRASAD, J.M.**

These three appeals are filed by the assessee for the assessment years 2014-15, 2016-17 & 2017-18 against different orders of the Ld.CIT(A)-Kanpur dated 18/07/2022 arising out of the assessment orders passed u/s 153C r.w.s. 143(3) of the Act.

2. In all these three appeals the assessee challenged the order of the Ld.CIT(Appeals) in partly sustaining the action of the AO in denying the cost of improvement of the property purchased by the assessee and in making addition u/s 69A of the Act. Assessee also filed additional grounds of appeal challenging the validity of the assessment made u/s 153C r.w.s. 143(3) of the Act on the ground that the said order was passed without service of mandatory notice u/s 143(2) of the Act and therefore the assessment order passed is *void ab initio*.

3. The Ld. Counsel for the assessee submits that the additional ground raised by the assessee is purely a legal ground and going to

the root of the very assessment framed u/s 153C r.w.s. 143(3) of the Act and therefore the same be admitted and adjudicated upon.

4. On hearing both the sides, we admit the additional ground raised by the assessee as it is a pure legal ground going to the root of the very validity of the assessment.

5. In so far as the non-issue of service of notice u/s 143(2) is concerned on reading from the assessment orders, we observed that there is no finding by the AO as to the issue and service of notice u/s 143(2) of the Act before completion of assessment u/s 153C r.w.s. 143(3) of the Act for the assessment years 2014-15, 2016-17 and 2017-18 which are under consideration. Record shows that several opportunities were given to the Revenue to produce the records and place on record the proof of issue and service of notice u/s 143(2) before completion of assessment, though opportunities given the Revenue could not furnish issue and service of notice u/s 143(2) of the Act.

6. The Ld. Counsel for the assessee brought to our notice that in identical circumstances the coordinate bench of Delhi Tribunal in the case of Uttam Enterprises Pvt. Ltd. Vs. ACIT (2022) [218 TTJ (Del) 9] held that notice u/s 143(2) issued by the AO beyond the time limit prescribed in the proviso to section 143(2) of the Act was

invalid and therefore the assessment order passed u/s 153C r.w.s. 143(3) is not sustainable. Ld. Counsel for the assessee also placed reliance on the decision of the Supreme Court in the case of CIT Vs. Laxmann Dass Khandelwal [AIR (2019) SSC 3926].

7. We find merit in the submission of the Ld. Counsel for the assessee. As observed earlier, perusal of the assessment orders do not suggest any issue and service of notice u/s 143(2) of the Act before completion of assessments. The Revenue also could not place any proof of issue and service of notice u/s 143(2) of the Act. Therefore, the ratio of the decision in the case of CIT Vs. Laxmann Dass Khandelwal (supra) squarely applies to the facts of the assessee's case. Similarly in the case of Uttam Enterprises Pvt. Ltd. Vs. ACIT (supra) the coordinate bench of the Tribunal held that notice issued u/s 143(2) of the Act beyond time limit prescribed in the proviso to section 143(2) was invalid and therefore the assessment order passed u/s 153C r.w.s. 143(3) is not sustainable.

8. In the case on hand there is neither a finding in the assessment order that notice u/s 143(2) was issued nor is there any proof of issue and service of notice to the Assessee. Therefore since the assessments were completed u/s 153C r.w.s. 143(3) of the Act for the assessment years 2014-15, 2016-17 and 2017-18 without issue of

notice u/s 143(2) of the Act such orders are *void ab initio* and the same are quashed. The additional ground raised by the assessee is allowed.

9. As we have quashed the assessment orders passed u/s 153C r.w.s. 143(3) of the Act on the legal issue, we are not inclined to go into the merits of the addition/disallowance made in assessments for assessment years 2014-15, 2016-17 and 2017-18 completed by the AO, at the stage as it would be of only academic in nature.

10. In the result, the appeals of the assessee for assessment years 2014-15, 2016-17 and 2017-18 are partly allowed as indicated above.

Order pronounced in the open court on 04/09/2024

Sd/-  
(DR. BRR KUMAR)  
ACCOUNTANT MEMBER

Sd/-  
(C.N. PRASAD)  
JUDICIAL MEMBER

Dated: 04/09/2024

\*Kavita Arora, Sr. P.S.

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT  
(DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi